

Crime Laboratory Commission Meeting

January 31, 2008

Department of Attorney General

150 South Main Street

Providence, RI 02903

3rd Floor Conference Room

10:00 a.m.

In attendance were Attorney General Patrick C. Lynch, Department of Attorney General; Deputy Attorney General Gerald Coyne, Rhode Island Department of Attorney General; Christopher Cotta, Rhode Island Department of Attorney General; Director Dennis Hilliard, Rhode Island State Crime Laboratory; Amy Duhaine, Rhode Island State Crime Laboratory; Chief Joseph Moran, Central Falls Police Department; Lieutenant Dennis Pincince, Rhode Island State Police; Nancy Haley; Chief George Kelley, RIPCA; Dean Ronald Jordan, University of Rhode Island.

I. INTRODUCTION

A. Welcome to Commission Members

Deputy Attorney General Coyne representing Attorney General Lynch welcomed Commission members calling the meeting to order at 10:00 a.m. Introductions were made of Commission members.

II. LABORATORY STATUS

A. Review of Laboratory Progress Report – 2007

Director Hilliard passed out packets to Commission members with the Progress Report for 2007. There has been an increase from last year. In 2006 there was an 18% increase in the number of cases while this year this was approximately a 5% increase over 2006.

The most common type of cases coming to the laboratory has been Firearms Violations and Breaking and Entering, with Providence Police Department being the number one contributor followed by Cranston.

The number of speaking engagements the Crime Laboratory has been doing has gone up over the course of the year. A member of the Crime Laboratory is out about once a week giving lectures.

We continue to make sure our analyst get the appropriate training. The training is generally paid for through the Coverdell Grants, with some funding from the regular budget. Most are provided by the Federal Government or provided through the Coverdell Grants.

As part of the accreditation, we also do a customer survey, which Director Hilliard brought if someone wants to review it. Basically our clientele is happy with the way in which we do our analysis. The lowest score was 4.25 out of 5 and that was on turn around time, which is an issue that most Laboratories have.

a. Case Confidentiality Issue

Under the accreditation guidelines, we have to assure customer confidentiality; however, in the course of our examinations it is sometimes necessary to provide information to other law enforcement agencies. We have a Memorandum of Understanding between ourselves and the Providence Police Department since they were our biggest contributor.

In speaking with Deputy Attorney General Coyne, Chief Kelley and members of the Police Chiefs' Association, we thought it might be easier to put a disclaimer on our Evidence Receipt Form. In your packet is a copy of the Evidence Receipt Form. At the top there always was a disclaimer about the evidence being submitted to the Laboratory, that it was a fact in a criminal matter and that the evidence hadn't been examined by another Laboratory unless noted. That we can perform examinations other than the ones asked for in case there is some more information we can gather. So we decided to add one more sentence to that which says, "The Crime Laboratory may share information concerning the results of these examinations with other authorized federal, state and local law enforcement agencies unless otherwise noted." Therefore, the Agency submitting can tell us that if they don't want this information shared then they can just let us know and it will be noted in the case file and no information will be shared. Lacking that note this information could be shared at the request of different agencies. Right now we've been

doing it as a matter of subpoena or by a written request. Now they would just have to make a phone request, we would mark it down as a phone conversation. When we brought this to the Police Chiefs' Association they said this would be fine.

Deputy Attorney General Coyne asked if there were any objections to this process.

There being none and no need for a vote, Director Hilliard stated it was a matter of making the Commission aware of the change.

b. Reference Gun Collection

Director Hilliard noted this was an issue that had been brought up approximately two years ago and tried to be solved through legislation that the Attorney General introduced to the House and Senate. The bills were tabled because of concerns by the Gun Lobbying sector and my information is that the Attorney General is going to reintroduce these bills on our behalf this session. The value of having a reference gun collection was that the Fire Examiner can take parts from reference gun collections to add to evidence guns and see if they can be made operable. We do have a small collection but by statute it may not be an authorized collection. We would like that cleared up.

B. ISO/IEC Accreditation

a. Quality Manager Position

Director Hilliard spoke regarding the Quality Manager Position. At the moment that position is created under a grant that we have from the RI Justice Commission, the Coverdell Grant and it's on a part-time basis. We initially hired this person for 20-25 hours a week under the Grant. When it came up to the University they said we can't approve more than 15 hours a week. Now I'm being told it's 10 hours a week on these kinds of appointments.

We discussed with our personnel manager in the Human Resource office, as to how to adjudicate this so we can have one person working so many hours a week. She explained if we created it as a job within the University structure then we can pay up to 18-19 hours a week without having to pay benefits. The beauty of not paying benefits is we can take more of the Grant and apply it towards hours. If we were to pay benefits we're talking about \$18,000 to pay for healthcare, retirement and FICA. Right now on the Grant we only pay FICA, which is about 7.65%. By adding \$16,000 in health medical costs, 9% in retirement costs and 4% in assessment costs you really drive up the cost of that job. We're going to recommend that we make it a job that still would be paid under Coverdell up to 19 hours a week but we may also look for additional funds to make it a part-time position, 20 hours a week. It would then make it more attractive to a single person working the job by offering the health benefits but by reducing the hourly rate, making it equivalent it to a Criminalist I position. It really depends on funds.

C. Systems Updates

a. NIBIN Update

The NIBIN update is in the Progress Report, which is for the current 2007 year. There were 288 cases entered with 38 hits. The use of the NIBIN equipment has dropped dramatically over the cost of the last few years. Adel Irizarry who is the appointed person from the Attorney General's office provided me with a spreadsheet that shows that in the first year 2002 over 716 casings were added in but now it's down to 288. It's unexplained as to why we're seeing drops in the numbers while we're seeing increase in firearm violation cases in the laboratory.

Deputy Attorney Coyne asked if the first year was artificially high because of the backlog.

Director Hilliard agreed regarding the first year having the backlog; however, the second year was at 615, then 339, 397, 275 and 278, so we are consistently dropping off. If we had to pay for NIBIN, he felt it wasn't worth it, but it certainly is a tool that's used in the Laboratory. It's not producing as many hits as we like but we don't pay for it. There is no associated cost for having it at the Lab other than the NIBIN entry person. As of now, that duty is shared between the Attorney General's office and our Firearms Examiner. It may be we will have to shift due to changes in our Firearms section and shift more work to Adel, which may become an issue.

Chief Kelley recalled when getting the system, ATF gave a minimum that had to be done every year. He questioned whether we are keeping up with that. He also asked about the turnaround time on the firearm cases.

Director Hilliard noted we have to do 225 a year, so we're barely squeaking by. NIBIN can be done much faster so long as the weapon is test fired. Adel has had other duties and hasn't been in the lab for 6-8 weeks but that's a matter of her coming and catching up. The firearm case because of backlog is about a year for doing the entire case. Most of the time they are doing priority cases we'll get a call saying we need the results on this case now, everything is put aside and just that case is worked on, but if a case came in and there is no priority on it, it could take up to a year before you see the results.

Chief Kelley stated that he will address it at the Police Chiefs' meeting, reminding them of NIBIN.

b. AFIS Update

We searched the Latent Print Database and came up with Latent to Print 879 searches with 71 hits; Latent to Palm 159 searches with 2 hits. Palm Print Database is less populated, so as they add more palm prints to the database we will see more hits. I don't know if every department is taking palm prints but as it gets added to the database we'll see more hits. They also enrolled 51 latents, meaning they came back that didn't hit the database. There was nothing to be

compared against so they get enrolled into the unknown database to be matched against future cases.

We got our most recent bill and did an invoice voucher, which should be paid shortly of \$11,504 for the first six months of the fiscal year. We assume the cost for the year will be approximately \$22,000.

Deputy Attorney Coyne stated he and Leroy Rose from the State Police met with the people from Connecticut. We had a three year Memorandum of Understanding with Connecticut. As everyone knows, our system is a piggyback with Connecticut. When we originally signed on to this system it was a change in how it had been billed. It use to be billed on a per transaction basis, which was costing us a lot of money and difficult to deal with. When Connecticut bought their new system, it was their suggestion that if we bought our system and maintained it, there would be no more transaction cost, which is what we did. We laid out close to 1 million dollars when it was done. It's been beneficial to us, we own it, but we also put this three year window in so we wouldn't lose track of where we were with Connecticut.

When we met with Connecticut, we anticipated because that last agreement was so favorable to us, they may look to change it, surprisingly they didn't. They are looking for is a new piece of equipment called a GPA, which is some kind of survey that would allow Connecticut to better search their databanks. Part of the

reason for that is Rhode Island is much further ahead than Connecticut in terms of when we put things into the Live Scan, we populate things automatically, Connecticut is not there yet. When they built the system they told us they expected the system to be capable up to ten years before they would need to revise or update it. It's been three years and they feel the need now.

They attribute most of that to increase applicants that are being screened. In Connecticut they save their applicants in the system, which we're not allowed to do. They are looking for a third server and were hoping that Rhode Island would be willing to pay something towards it. What I told them was philosophically since it's maintaining the system we use, we would be willing to entertain that; however, we would need a lot more details and since we are already far along into this years fiscal years budget process so there's no money to be had. Deputy Attorney Coyne suggested that since we don't generate the money ourselves, we would have the most luck trying to take and convince people that Rhode Island should bear a portion of that server that would be roughly matching the percentage of Rhode Island cards in the system, which is about 10%, so it's about \$75,000 and that's in the future.

Bottom line is that our costs are not going to go up in the short term and at least from where Leroy and I were sitting our relationship with Connecticut seems to be better with the change in a couple of people down there. It was actually a very good meeting. We need I think

over the next couple of years, as we did once before to take a hard look at whether or not as a state we want to take and continue with Connecticut or have our own system. There's pluses and minuses to both ways, and there's a huge dollar commitment.

D. Laboratory Personnel

a. Reappointment of staff members on an annual basis

i. R. I. General Laws 12-1.1-8(10)

Director Hilliard stated is has been the practice of this Commission to approve reappointments of positions in the Laboratory. Because of the way the Laboratory is funded at the University, everyone is on a limited period appointment for one year. The Attorney General takes the appropriation from the General Assembly and provides it to the University as a Grant to operate the Crime Laboratory. The University's position is that these positions can't be continually appointed unless the funding is there, so each year the University reappoints those positions based on a letter from the Attorney General's office that says there is x amount of dollars appropriated for the Crime Laboratory and will confirm that once the General Assembly makes their final budget. In the past, this Commission has taken a position that they need to approve those appointments because statutorily they have to approve all appointments of the Laboratory.

Deputy Attorney General Coyne noted when looking at the Statute it technically just says we're going to approve or disapprove the

Director and all other positions, but hearing Dennis explain why from URI's point of view, this is a practice that serves a purpose. Deputy Attorney General Coyne asked Director Hilliard if he was aware of any reason why the Commission should not entertain a reappointment of the current employees.

Director Hilliard did not and recommended that the Commission approve all the positions, except for the Director's position of course because that is covered differently.

Deputy Attorney Coyne moves that the Commission reappoints the current staff members for this fiscal year. We would need to get back on track to do it again at the start of the next fiscal year, since we are still catching up. With Chief Kelley seconded, and all Commission members in favor, the current Crime Lab staff has been reappointed.

b. Reappointment of Director – five year appointment

i. R.I. General Laws 12-1.2-5(a)(b)

Deputy Attorney Coyne spoke regarding Director Hilliard's last appointment which was May of 2000. Because of the Separation of Powers we were not in session when Director Hilliard would have been up for a reappointment. Again, still trying to get back on track, the statute authorizes a reappointment. We had gone through a limited review process the last time but not being aware of any reasons not to reappoint Director Hilliard, I would request or move on behalf of the Commission, that Dean Jordan consult with URI and

report back to us for the next meeting at which time we'll entertain a formal motion for Director Hilliard to be reappointed. My recommendation would be that we appoint five years going forward at this point. Chief Kelley seconded, with all Commission members being in favor.

c. Firearms section

We have received a resignation from Lawrence Pilcher, who was hired in 2003 for the purpose of eventually replacing Bob Hathaway. Mr. Pilcher has found a new position in Kentucky, with the date effective February 29, 2008. The question now becomes how we move to replace Mr. Pilcher. Mr. Hathaway also came and has hinted about retirement by June 30, 2008. We cannot bring in another trainee like we did with Mr. Pilcher. We have to bring in someone who has extensive training, at least seven years plus, and that's the rank of Criminalist II, that Mr. Hathaway holds. Director Hilliard's recommendation to the Commission is that we advertise for a Criminalist II position at a moderately higher salary than what Mr. Pilcher is getting, which is \$45,000.

In speaking to Mr. Hathaway, he's familiar with the candidate pool out there for fire examiners and most of them have jobs that are paying \$60-70,000 a year plus. There's a salary scale, which Director Hilliard spoke about showing the salary ranges for each of the positions in the Laboratory. Director Hilliard recommends that we advertise the position and offer a salary in the range of Step 6 for the Criminalist II

position at a minimum, \$55,000 plus benefits and see what kind of response we get from that.

Attorney General Coyne asked what Director Hilliard's recommendation is to go forward and get this done as efficient as we can.

Director Hilliard is going to go HRA today and get the package to start the process, through URI. He wanted the Commission to know rather than hiring at a Criminalist I we're going to hire at a Criminalist II level because of the need to bring in an experienced examiner. If in fact Mr. Hathaway does retire at the end of June 2008, we won't have anyone to train, so we have to look for a qualified examiner. We may eventually have to come back to the Commission and ask for a higher pay grade. It's something we talked about last time in terms of comparable salaries in Rhode Island versus comparable salaries in other states. Even in the consolidation effort we saw that there were discrepancies between laboratory people work in Providence versus laboratory people that work at the Crime Lab. It may come that the Commission is going to have to look at recommending more money into the budget because we have to pay higher salaries.

The only other thing to do is to bring in a Tech I like we did with Mr. Pilcher and pay them at a lower rate of \$32,000, but we need to have someone on staff that can train that person and not have case work suffer. Before we can talk about bringing in a technician we have to

have at least one fully trained examiner on board that will stay for at least two or three years to help train the others. It comes down to how much money is in the budget. This year we do have money in the budget because of carrying the surplus over.

Deputy Attorney General Coyne asked if any Commission members had any reservations or concerns about the process that Director Hilliard suggested.

Feeling it is unlikely finding a Rhode Island person, Chief Kelley questioned if there is a residency issue.

Director Hilliard stated since it's not a classified position, there is no residency requirement for those jobs. There are some potential candidates out there that Mr. Hathaway is aware of, whether or not they are willing to take the position at that salary level becomes the question. The only other possible type of solution that was brought up is to bring a person from the Providence Police Department. We would be talking about a cooperative effort between Providence Police Department and the Crime Lab. It has worked in Connecticut. I've had some limited discussions with Major Campbell on this issue because Patty Cornell, who is an expert in fingerprint examination would like to transition to firearms. She has a military background, she's familiar with firearms, the techniques of fingerprint work meld into the techniques of firearms identification. We are trying to work with Providence to put her on loan to us so she can train in firearms

and she can do all the Providence cases. There would be no training necessary she could do all the test fires and that would take up a lot of our backlog. The operative word is partnership and the Providence Police Department paying for the position as opposed to us paying out of our budget. It has to be a big chunk of time, if you're going to take advantage of Mr. Hathaway's expertise within the next five months or so, you've got to be down there more often than once a week and that's going to be an issue. That may be another answer if we can't attract a person and then eventually when she retires from Providence she can then become a fire examiner for the state, so those are all potentials out there. Now whether or not Providence wants to buy into this I'm not sure. We had proposed this to both the State Police and to the Providence Police Department more than a year ago and neither one of them could put it within their budget structure to justify.

I have a copy of the partnership agreement between Waterbury Police Department and the Connecticut State Department of Public Safety for that person. That's the kind of partnership we would like to create. We just had the discussion with Major Campbell and he's going to talk to Major Kennedy and maybe run it upstairs to the Colonel. I suspect to hear from him next week.

Deputy Attorney General Coyne noted that the State Police when they retire can't work for the State Crime Lab.

Christopher Cotta asked if there is any required certification process for firearms expert or training.

Director Hilliard stated there is no formal schooling; however, there are training's and also a certification but it's not mandatory. ATF runs a one-year training program that we put Lawrence Pilcher through, that's the best training. The University of New Haven is supposed to start training and also start training war veterans in firearms examination to increase the applicant pool. That training is about a year long and that's why we want to hire a trained examiner. Even if you send them to school, you have to have a trained examiner at your facility to oversee their training. It was decided for the time being they will proceed with the Criminalist II position.

E. Consolidation Efforts

a. Department of Public Safety

Deputy Attorney General Coyne spoke to Colonel Doherty, who got called away at the last minute to the meeting at the Governor's office having to do with budget.

Lieutenant Pincince had a brief discussion with the Colonel, who has been approached by the Department of Health, Dr. Gifford to basically take over the Forensic Lab. They also discussed the issue of consolidation. As you know we are not going to be building the headquarters that we were going to build, so space is limited. I asked

him about the consolidation of the Crime Laboratory with the Health Department under the umbrella of the Department of Public Safety. There have been talks between the Governor, the Department of Health and the Colonel, but there are no immediate plans, at some point in time it may happen. If I have any chance to weigh in on the issue, right now it would be my recommendation to the Colonel that they do some type of consolidation at the University of Rhode Island if they have the space and leave it there. Now whether at some point in time you fall under the Department of Public Safety, whether the Director would report to a Lieutenant who would report to the Colonel or whether the Director would report directly to the Colonel, those are issues that would have to be discussed at that time.

Dean Jordan spoke regarding his meeting with Bob Weygand and talked about the Crime Lab and its potential consolidation. Mr. Weygand feels the Crime Lab is an important part of the University and has stimulated a lot of very positive activity. We feel the independence and association with the University is a positive unique model in this area that adds value to the University. Now that the plan to move to the State Police Headquarters is not proceeding, we basically got his agreement that as we move forward in the College of Pharmacy with our new facility, which we anticipate to occupy July 2010 to December 2010, he's committed to make space available at Fogarty that we are going to vacate for a consolidated Lab with the Department of Health.

When Dr. Uliss was here in December he was told by FY10 to move his Unit within the Department of Public Safety administratively although they would not go anywhere. I think the University comes to the table now and says, rather than doing that why don't we administratively move it to the University of Rhode Island FY10 and then physically move in 2010-2011 down to URI. Director Hilliard felt that the Commission needs to move to recommend this to the Governor.

Deputy Attorney General Coyne following up having dealt with this issue for a number of years noted Mr. Weygand's step as a huge step forward towards trying to resolve what has been a long standing issue. Being mindful that out of respect to him and the University, we don't want the Commission to speak for them until Mr. Weygand has the ability to produce what he wants. Director Hilliard and Dean Jordan will speak to Mr. Weygand regarding what he feels comfortable with us going forward to the Governor with. We don't want to misquote him. We're not looking for him to sign off, we just want to make sure we are all on the same page of what we are in agreement with. It was decided that Director Hilliard and Dean Jordan will meet with Mr. Weygand and put something down on paper and bring to the next Commission meeting.

III. FUNDING

Director Hilliard noted that by allowing the funding for the laboratory to become part of the University's line item budget and by removing it

from the Attorney General's budget as a potential competitive edge, and by doing so there will be no requirement for overhead funds, which was the main point in our initial discussions. That was the big issue the 25% because the University would incorporate it as part and parcel of the University structure, overhead wouldn't be charged but they would have to go and ask for additional funding to operate an additional building.

Dean Jordan stated it's a line item within the University, not under the Universities budget as a subsection but there is a line item that adequately funds it so that it's not causing detriment to anybody else's budget. If that is acceptable and desirable and that the overhead that is already with the Administration of Personnel and the other things go on at the University already occurs and there's no need for a separate individual and I think that we've convinced him as a result or he knows now the value to the University in return the stimulation that Forensic partnership is there to essentially cover what overhead might exist.

A. FY2008

Director Hilliard spoke regarding spending for this year stating they are on track. We have the surplus from previous years so we increased our budget allocation from the \$654,000 that was approved by the General Assembly to availability of \$703,000 in funding with the adjustments for rollover. So that's why right now we have this money available for this year to offer the higher salary for the

Criminalist position. As to whether or not we can carry any excess funds over again, we'll have to see what happens. We were able to in agreement with the Commission, move salaries on a merit basis for our employees, so nearly everyone got a one step merit increase. No cost of living has been applied for this year, so we don't have any cost of living adjustments from this years budget so I may be coming back again next year.

B. FY2009

This is a reiteration of the budget that I presented to the Commission last year for FY09. It adds the Quality Management position as a full-time position, but that position could be paid half-time, mostly with grant money with very little money coming from the Crime Lab budget. So you have right there an adjustment of approximately \$50,000, which would then put us in align with what we expected to get, which was \$675,000. Once we know their number we'll readjust the budget for the Commission's consideration at the next meeting.

There are a lot of outstanding questions because of the position of the Criminalist position and whether Mr. Hathaway actually retires or not.

C. Coverdell Grant

Director Hilliard noted this is the main federal funding that the Laboratory receives. Nondiscretionary monies that the state can get is about \$96,000 this year. It was split this year between ourselves,

the Department of Health Laboratories and the Medical Examiner. We took approximately \$46,000 to pay for the part-time Quality Manager position and to pay for training for our laboratory personnel. Hopefully this will be in each year in the federal budget. There is a discretionary part and we can apply for grants up to \$100,000. This is something that we would look at if we were to renovate Fogarty Hall, that we would put in a proposal. I'll be down in Washington, DC in February and try to meet with some people to talk to them about the Coverdell money.

Attorney General Lynch asked that Director Hilliard keep him aware of those meetings and if he can supplement with a letter he would be happy to do so. Director Hilliard suggested to anybody on this Commission who meets with a federal representative, they encourage them to support Coverdell for additional funding, as Byrne Grant money is really dried up. We had over \$200,000 in Byrne Grant money the past couple of years, which was used to do the accreditation process.

D. STAC Grant

Director Hilliard spoke regarding the STAC Grant, which is a strategic technology part of trying to partner Universities with private companies. We were fortunate enough to get a grant last year in conjunction with Iron Technologies in which we provided some analysis of their software for looking at arson cases. They were very happy with what we did, provided us with some funding to offset

payroll. One big thing we offset was the service agreement on our GC, which is about \$6,000 a year and we used about \$2,000 from the grant to offset that, so there was some savings within our budget. It should provide us with some additional excess this year that we can hopefully rollover into the next year or two. That grant ended as of December 31, 2007. Dean Jordan has since gone to the Committee and is working on that kind of private/public sector type thing too, so I think it's something we can look at again in the future.

IV. NEW BUSINESS

A. Items from the Floor

Deputy Attorney General Coyne spoke regarding the issue to adopt a records management system at the Lab, which really means a records destruction system and the time frame in which you can get rid of certain things. We are in the process of doing the same. Richard Woolley of our Civil Division has been doing it for our office and will work with the Crime Lab to come up with a solution. There needs to be a schedule of proof and there is a process to go through and we've already done it.

Director Hilliard contacted Capitol Records Management, which handles most of the records for the state and they said, set up an account and we'll store your records and if you need to access them they will charge us so much. We're dealing with about 50+ years of records right now and due to limited space and storage we're looking

to maybe keep 10 years of records on hand. We are also looking at long term storage for the records that need to be maintained.

The meeting was adjourned at 11:00 a.m.

Minutes taken and transcribed by:

Teresa A. Dorrance, Department of Attorney General